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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,502	08/20/2003	Rickey Childress		6566
7590	03/02/2005		EXAMINER	
Gregory M. Friedlander Gregory M. Friedlander & Associates, P.C. 11 South Florida Street Mobile, AL 36606-1984			FUQUA, SHAWNTINA T	
		ART UNIT	PAPER NUMBER	
		3742		

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/644,502	CHILDRESS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shawntina T. Fuqua	3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 02 November 2004.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 14-21 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 14 and 16 is/are allowed.
- 6) Claim(s) 17-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 20 August 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 17 recites the limitation "the seal" in line8. There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lodge et al (US518859) in view of Brastad (US4267420).

Lodge et al discloses a method for producing foods which may be cooked in the presence of microwave energy comprising the steps of selecting a friable food, compressing the food into a pellet, coating the surface with a microwavable heatable substance (abstract; column 6, lines 17-20), the food product is flour and starch (column 3, line 40-41) with water (column 4, line 8), flour is from the group consisting of potato, wheat, corn, bran, rice or combinations thereof

(column 3, lines 48-60), flavoring combined with pellet (column 4, lines 40-44), grinding food product into a paste and mixing with water (column 4, lines 60-62; column 5, lines 6-14), coating pellet with oil which is a non-starch food product (column 5, lines 25-38), separating and microwaving the pellets (column 5, lines 49-58; column 6, lines 17-20), container allows the passage of air but provides a moisture and heat barrier (column 5, line 49-58), container separates pellets (column 5, lines 49-58), and compressing the pellet within an extrusion (column 5, lines 6-23). Lodge et al discloses all of the recited subject matter except a breathable, polyester, heat resistant cover having a top and bottom layer with a thickness between 70-100 gauge, and an adhesion seal. Brastad discloses a breathable, polyester, heat resistant cover having a top and bottom layer with a thickness between 70-100 gauge (column 3, lines 42-51; column 4, lines 6-24), and an adhesion seal (column 4, lines 6-9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the cover and adhesion seal of Brastad in the method of Lodge et al because, a breathable, polyester, heat resistant plastic cover allows the food item to attain the desired browning and crispening.

*Allowable Subject Matter*

6. Claims 14-16 are allowed.

*Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawntina T. Fuqua whose telephone number is (571) 272-4779. The examiner can normally be reached on Monday-Friday 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on (571) 272-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

stf  
February 21, 2005

  
Shawntina Fuqua  
Patent Examiner  
Art Unit 3742